IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.554 OF 1999

1. Arjun Ramchandra Khopkar,
Age 37 years.

2. Maruti Balbhim Khopkar,
Age 47 years.

3. Subhash Pralhad Ghogare,
Age 24 years.

4. Raju Ramrao Phadtare,
Age 35 years.

5. Viju Vasant Kamble,
Age 22 years.

6. Dada alias Ramdas Maruti Jagtap, .. Appellants
Age 36 years. (Orig.Accused Nos. 1 to 6)

All R/o.Village Survad,
Tal. Indapur.

Versus

State of Maharashtra
Through Smt.Rajiya Mubarak Maneri, .. Respondent
Adult. (Orig.Complainant)
R/o.Survad, Tal. Indapur.

Mr.U.G. Kerkar for the appellants.

Ms.Usha Kejariwal, APP for the State.

CORAM : R.M.LODHA AND
R.S.MOHITE, JJ.

DATED : 13th January, 2005

ORAL JUDGMENT (Per R.M. Lodha, J.)

Arjun Ramchandra Khopkar, Maruti Balbhim Khopkar, Subhash Pralhad Ghogare, Raju Ramrao Phadtare, Viju Vasant Kamble and Dasa alias Ramdas Maruti Jagtap, the appellants before us and Suresh Maruti Pawar were prosecuted under sections 302,

341, 504, 506, 147, 148 read with 149 of the IPC in the court of Additional Sessions Judge, Baramati. Upon conclusion of the trial, the Additional District Judge, Baramati vide his judgment dated 10th September, 199 acquitted Suresh Maruti Pawar. However, the present appellants were convicted by the learned Additional Sessions Judge of the offences punishable under sections 302, 341, 506, 148 read with section 149 IPC. For the offence punishable under section 302 read with section 149 IPC, the appellants have been sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- each and in default to suffer R.I. for one year. In respect of the offence punishable under section 506 IPC, the appellants have been sentenced to suffer R.I. for six months and a fine of Rs.100/- each and in default to suffer R.I. for 15 days. No separate sentence was passed against the appellants for the offences punishable under sections 341, 148 r/w. section 149 of the IPC. Both the sentences were ordered to run concurrently. Aggrieved by their conviction and sentence, the appellants have preferred this appeal.

2. The prosecution case as made out at the trial is as under:-

On 31st May, 1995 Mubarak Gulab Maneri

(deceased), his wife Rajiya (PW2) and their children went to their agricultural field in the morning. Their children returned home in the afternoon. Mubarak and his wife Rajiya loaded fodder in the bullock-cart and started returning home at about 5 p.m. When the bullock-cart reached near the road passing through the land of one Dashrath Surve, situate near Bhandgaon-Bavada Shiv, the accused persons Arjun Khopkar (A1) and Maruti (A2) came out all of a sudden from the standing crop and stood in front of the bullock-cart. A1 and A2 asked Mubarak to get down from the bullock-cart. Mubarak as well as Rajiya got down from the bullock-cart. A1 was holding iron bar in his hand while A2 was armed with wooden log. At that time, Subhash Ghoghare (A3), Raju Phadtare (A4), Viju Kamble (A5), Dasa alias Ramdas (A6) and Suresh Pawar (A7) holding stones in their hands appeared from the standing sugarcane crop. A1 started beating Mubarak on his leg by the iron rod. A2 gave a blow of wooden log on Mubarak's forehead. Rajiya rushed towards her husband Mubarak to save him but the accused persons threatened and did not allow her to intervene. A3 to A7 assaulted Mubarak by stones. Rajiya ran towards the house. Her in-laws, brother-in-law Raju @ Rajendra (PW3) and his wife were present in the house. Rajiya narrated the incident to them. Accused persons came to their house and slapped Mubarak's mother.

The family members went to the place of incident and brought Mubarak to their house in the bullock-cart. At that time, police jeep came and Mubarak was taken to Indapur Rural Hospital in the police jeep. At Indapur Rural Hospital, Mubarak was declared dead. Rajiya went to the police station and lodged the report. On the basis thereof, the first information report was registered for an offence punishable under sections 302, 147, 148, 149, 341, 343, 504, 506 IPC. Ranganath Bhaurao Gaikar (PW 10) conducted investigation. He first held inquest upon the dead body of Mubarak and prepared the inquest panchanama. The dead body of Mubarak was sent for postmortem examination. In the course of investigation PW 10 arrested the accused persons and pursuant to their statements recovered iron bar, wooden log and stones. He recorded statements of various witnesses and also attached pieces of bangles, blood stained earth and some stones from the place under the panchanama. On completion of the investigation, PW 10 submitted chargesheet and in due course the accused persons were committed to the Court of Sessions.

3. In support of its case, the prosecution examined besides other witnesses, Lala Gulab Maneri (PW 1), Rajiya (PW 2), Rajendra (PW3), and Bismilla Lala Maneri (PW 4), who gave ocular version of the

incident. Dr. Sanjay Maruti Hegade (PW 8), the Medical Officer in the Rural hospital, Indapur who conducted postmortem examination on the dead body of Mubarak was also examined. The investigating officer Ranganath Bhaurao Gaikar examined himself as PW 10.

4. That the death of Mubarak was homicidal is not in doubt. PW 8 testified that he conducted postmortem examination on the dead body of Mubarak on 1.6.95 and found the following injuries on his person:-

1. Contused lacerated wound sized 2 x 1 C.M. on central forehead.
2. Multiple contusion on right shoulder
3. Contused lacerated wound sized 4 x 2 c.m. on left elbow.
4. Contused lacerated wound sized 2 x 1 c.m. on left posterior elbow.
5. Contusion on right shoulder and upper arm.
6. Compound fracture on right upper one third of tibia fibula.
7. Compound fracture on left lower 1/3 of tibia fibula.
8. Multiple contused lacerated wounds over right lower leg.

5. According to PW8 the cause of death was due to hypovalumic shock due to injuries. The death of Mubarak is, therefore, established to be homicidal.

6. The learned trial Judge sifted the evidence on record and held that the accused persons A1 to A6 formed an unlawful assembly armed with weapons with a common object to cause death of Mubarak. The learned trial Judge also held that A1 to A6 in prosecution of their common object and being members of unlawful assembly restrained deceased Mubarak and his wife Rajiya while they were proceeding to their house in bullock-cart. The learned trial Judge, thus, convicted the accused persons A1 to A6 of the offences punishable under sections 302, 341, 506, 148 read with section 149 IPC and sentenced them as noticed above.

7. PW2 Rajiya is the eye witness to the entire incident. Her presence at the place of incident cannot be doubted. Her testimony that A1 to A6 assaulted her husband on 31.05.95 at about 5 PM inspires confidence. According to her, A1 was armed with iron bar and he started assaulting her husband on his leg. A2 gave a blow of wooden log on her husband's forehead. A3, A4, A5 and A6 pelted stones on Mubarak. The defence sought to discredit her testimony by suggesting that she has falsely implicated the accused persons. It is highly unnatural that a lady who had witnessed her husband having been assaulted and murdered by 6/7 persons would screen real culprits. That she has roped in the accused persons falsely because in the

complaint against one Shahaji Gaikwad lodged by Mubarak, A1, A2, A4 and A6 declined to support the criminal case against Shahaji Gaikwad cannot be accepted. Shahaji Gaikwad was prosecuted for having outraged the modesty of PW2. The examination of present PW2 in that criminal case started in the month of November, 1996 and that case ended thereafter. The present incident occurred on 31st May, 1995 and thus, there was no occasion for A1, A2, A4 and A6 to give evidence false or otherwise in that case. The suggestion of the defence, therefore, that A1, A2, A4 and A6 who were the prosecution witnesses in the criminal case against Shahaji Gaikwad having declined to support that prosecution case, these accused persons have been falsely implicated, does not merit acceptance. We find deposition of PW2 natural, truthful, creditworthy and reliable.

8. The evidence of PW2 is corroborated by the first information report as well as medical evidence. The injuries on the person of Mubarak have already been noticed by us above and a perusal thereof would show that Mubarak sustained compound fracture on right upper one third of tibia fibula and compound fracture on left lower 1/3 of tibia fibula. According to PW2, A1 gave beating on the leg of the deceased Mubarak by iron rod. PW 10 has opined that these injuries would occur by iron rod

blow. The deceased was also found to have suffered contused lacerated wound on central forehead. PW2 deposed that A2 assaulted on Mubarak's forehead by wooden log. The medical evidence corroborates this fact. The deceased had also suffered contused lacerated wounds on left elbow and contusion on right shoulder and upper arm. These injuries could be caused by stones. The medical evidence, thus, corroborates the ocular evidence of PW 2.

9. The prosecution has also relied upon oral dying declarations said to have been made by the deceased. In this connection, we shall first turn to the evidence of PW 3. He is brother of the deceased. According to him, on the date of the incident at the time of sunset, he, his parents and his brother were sitting in their house. At that time, PW 2 came weeping and crying loudly. Rajiya told them that her husband had been beaten severely and his life should be saved. He rushed towards the place of incident. His brother was lying and asking for drinking water. He brought water and poured in his mouth. His brother (Mubarak) told him that A1 to A7 beat him (Mubarak). At that time, his father Gulab and other members also came. His father Gulab asked Mubarak as to what happened and Mubarak narrated him the same story. He had been cross-examined at quite some length. Some improvement in his deposition was brought to the

notice. However, on a close scrutiny of the evidence of PW3, we find that he is reliable witness and his deposition to the extent that the deceased told him that the accused persons assaulted him (Mubarak) is acceptable. His deposition is consistent with the deposition of PW2.

10. Then there is deposition of PW 1 Lala. He is also one of the brothers of Mubarak. He deposed that he saw his brother Mubarak lying in injured condition in water channel demanding water and upon his asking, his brother told him that A1 to A7 gave beating. We examined his deposition closely and carefully. He does not seem to have deposed truthfully. He is not natural witness. In the circumstances, we are not inclined to rely upon the deposition of PW 1.

11. Bismilla (PW 4) has also been examined by the prosecution. She is wife of Lala (PW 1). Though she deposed that Mubarak (deceased) told his father-in-law that A1 to A7 gave beating to him, her having visited the place of incident is not borne out from the evidence of PW 2. Her evidence is also, therefore, of not much use and help to the case of the prosecution.

12. Even if the evidence of PW 1 and PW 4 is

ignored, and that we do ignore, we are satisfied that the findings of the learned trial Judge deserve to be confirmed in the light of the ocular evidence of PW2, the oral dying declaration made by the deceased to PW3, the medical evidence and the recovery of iron bar and wooden log made at the instance of A1 and A2 respectively.

13. The recovery of iron bar and wooden log cannot be discarded merely because the panch witnesses turned hostile. The deposition of PW 10 is reliable and creditworthy with regard to the recovery of these two articles.

14. The learned counsel for the accused-appellants urged that the first information report registered on the basis of the report of PW2 cannot be treated as the first information report since the police had already commenced investigation based on some prior information. He contended that had station house diary been produced by the prosecution, this would have clearly established that the purported first information report cannot be legally treated as first information report. We are not persuaded by the submission of the learned counsel for the appellants. In the police papers extract of the station house diary is available. The investigating officer (PW 10) was neither confronted nor cross-examined in this regard by the

defence. Even if it is assumed that some information was received by the police about Mubarak having been assaulted and based on that information, the police went to the place of incident and later on PW2 made the report and based on that first information report was lodged, in our considered view, the said first information report does not cease to be first information report.

15. The learned counsel for the appellants contended that in any case there was no intention on the part of the accused persons to cause death of Mubarak and, therefore, the appellants cannot be convicted for the offence punishable under section 302 read with section 149 IPC. In this connection, the learned counsel relied upon the following judgments:-

i) Ranjha and anr. v. State of Punjab, AIR 1996 SC 2741,

ii) Mavila Thamban Nambiar v. State of Kerala, AIR 1997 SC 687,

iii) Ramkishan and ors. v. State of Rajasthan, 1997 SCC (Cri) 1106, and

iv) Kesra and ors. v. State of Rajasthan, 1999 Cri.L.J. 2625.

16. We have already referred to the facts relating to the incident and the injuries suffered by the deceased. It is amply established on record that accused persons A1 to A6 were members of unlawful assembly. A1 was armed with iron bar; A2 was

armed with wooden log and A3 to A6 were armed with stones when the deceased and his wife reached the road near Dashrath Surve's house. A1 and A2 came out of the nearby standing crops and stood infront of the bullock-cart and asked the deceased Mubarak to come down. Both, Mubarak and PW 2 got down. A1 started beating on the leg of the deceased by iron rod and A2 gave a blow on the forehead of the deceased by wooden log. A3 to A6 also came out of the standing sugarcane crop and assaulted the deceased by stones. As a result of the assault by A1 and A2 and A3 to A6, the deceased sustained 8 bodily injuries. Injuries Nos.6 and 7 have been found by PW 10 to be sufficient to cause death in the ordinary course of nature. These facts establish that the accused-appellants by causing the death of Mubarak, the accused-appellants committed the offence of murder. Section 300, thirdly provides that if the act by which the death is done with the intention to cause a bodily injury and the bodily injury intended to be inflicted is sufficient to cause death, the offence is murder. The case does not fall in any of the exceptions of section 300. The offence is, thus, made out under section 302 read with section 149 IPC. None of the cases cited by the learned counsel for the appellants needs deeper scrutiny as each case turned on its own facts and in the light of the facts obtaining therein, it was held that the

offence under section 302 was not made out but was covered by section 304 Part-II. The facts and circumstances of the case in hand clinchingly establish the offence under section 302 read with section 149. There was no challenge to the conviction of the accused persons for the offences punishable under sections 341, 506 and 148 IPC.

17. The appeal, accordingly, fails. The conviction and sentence awarded by the learned Additional Sessions Judge, Baramati is maintained. The appellants Nos.3 to 6 who are on bail are directed to surrender to their bail bonds. Their bail bonds are cancelled.

(R.M.LODHA, J.)

(R.S.MOHITE, J.)